

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Casey McCann	Team: Squad #14	CCRB Case #: 201903818	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 05/06/2019 7:15 AM	Location of Incident: § 87(2)(b)	Precinct: 73	18 Mo. SOL 11/6/2020	EO SOL 6/23/2021	
Date/Time CV Reported Mon, 05/06/2019 8:03 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 05/06/2019 8:03 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Paul Viar	2928	923317	WARRSEC
2. An officer			WARRSEC
3. SGT Eric Samuels	01464	923106	WARRSEC

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Paul Viar	Abuse: Detective Paul Viar entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
B.DT3 Paul Viar	Abuse: Detective Paul Viar searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)
C.DT3 Paul Viar	Discourtesy: Detective Paul Viar spoke discourteously to § 87(2)(b)	§ 87(2)(b)
D.SGT Eric Samuels	Discourtesy: Sergeant Eric Samuels acted discourteously toward § 87(2)(b)	§ 87(2)(b)
E.SGT Eric Samuels	Discourtesy: Sergeant Eric Samuels spoke discourteously to § 87(2)(b)	§ 87(2)(b)
F. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)

Case Summary

On May 6, 2019, § 87(2)(b) filed this complaint with the CCRB via telephone.

On May 6, 2019, at approximately 7:15 a.m., Detective Paul Viar, Sergeant Eric Samuels, and several other officers, all assigned to the Warrant Section, went to § 87(2)(b) in Brooklyn to execute a parole warrant for § 87(2)(b) § 87(2)(b) her daughter, § 87(2)(b) and her son, § 87(2)(b) were home at the time. Det. Viar entered and searched the apartment (**Allegations A and B: Abuse of Authority**, § 87(2)(g)). Det. Viar allegedly told § 87(2)(b) to “shut the fuck up” (**Allegation C: Discourtesy**, § 87(2)(g)). Sgt. Samuels allegedly stepped on the wires of § 87(2)(b)'s respiratory device and stated, “Fuck you” and, “Fuck your wires.” (**Allegations D and E: Discourtesy**, § 87(2)(g)). An additional unidentified officer allegedly told § 87(2)(b) to “shut the fuck up” (**Allegation F: Discourtesy**, § 87(2)(g)). § 87(4-b), § 87(2)(g) The officers did not locate § 87(2)(b) inside the apartment. § 87(2)(b) was arrested pursuant to an Investigation Card (hereafter referred to as an I-Card) for § 87(2)(b). § 87(2)(b) and § 87(2)(b) were not arrested or summonsed.

There is no video footage of this incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Detective Paul Viar entered § 87(2)(b) in Brooklyn.

Allegation (B) Abuse of Authority: Detective Paul Viar searched § 87(2)(b) in Brooklyn.

The investigation established the following facts: In late April or early May 2019, Det. Viar was assigned as the investigating officer for a parole warrant issued for § 87(2)(b). On May 6, 2019, at approximately 7:15 a.m., Det. Viar, Sgt. Samuels, and other officers went to § 87(2)(b) which was § 87(2)(b)-old § 87(2)(b)'s residence, the girlfriend of § 87(2)(b) § 87(2)(b) resided at the location with § 87(2)(b) and § 87(2)(b). § 87(2)(b) did not live with § 87(2)(b). In the process of conducting searches for the location, Det. Viar located an active I-Card with probable cause to arrest for § 87(2)(b) generated for an incident from 2018. The officers entered the apartment and searched it for § 87(2)(b) but did not locate him. § 87(2)(b) was arrested pursuant to the I-Card.

Parole Officer Dotts (BR 01), § 87(2)(b) parole officer, provided a brief telephone statement and explained that she was not present for the incident, but because § 87(2)(b) was an absconder and Parole could not locate him, the NYPD Warrant Squad was automatically notified due to the issuance of an absconder warrant. Parole officers do not need to be present for the NYPD to execute the warrant.

§ 87(2)(b) (BR 02) testified that she was at home sleeping when she awoke to knocking on her front door. § 87(2)(b) asked through the door who was there and voices replied, “Police.” § 87(2)(b) opened the door wide enough to put her head in the doorway. Det. Viar asked § 87(2)(b) for her name, which she provided. Det. Viar explained that they were looking for § 87(2)(b) who had a parole warrant. § 87(2)(b) informed the officers that § 87(2)(b) did not live at the apartment, but Det. Viar insisted that the officers had to search the house. Det. Viar also informed § 87(2)(b) that they obtained her address from § 87(2)(b) parole officer. § 87(2)(b)

§ 87(2)(b) asked Det. Viar why the officers had to search the house if § 87(2)(b) did not live with her. Det. Viar pushed the door farther open with his shoulder and entered the apartment. § 87(2)(b) did not verbally consent or otherwise make any gestures offering consent for the officers to enter. Once inside, the officers looked in the living room, bedrooms, and closets for § 87(2)(b).

§ 87(2)(b) (BR 03) and § 87(2)(b) (BR 04) provided generally consistent testimony that they were both asleep at the time the officers entered the apartment. § 87(2)(b) who suffers from a respiratory condition and needs an oxygen tank to assist her breathing, testified that she awoke when officers knocked on her bedroom door. § 87(2)(b) awoke to a “booming sound,” which sounded like his door was being kicked in.

Det. Viar (BR 05) testified that prior to this incident, in February 2019, he was assigned a parole warrant for § 87(2)(b). Upon speaking with a friend of § 87(2)(b) the friend informed Det. Viar that § 87(2)(b) sometimes stays with his girlfriend, § 87(2)(b). In late April or May 2019, Det. Viar was assigned another parole warrant for § 87(2)(b). Det. Viar spoke with § 87(2)(b) parole officer, who informed him that § 87(2)(b) resides at a juvenile facility in Staten Island. § 87(2)(b) § 87(2)(b) parole officer provided three addresses where § 87(2)(b) would stay if he was not at the facility: § 87(2)(b)'s address, his father's address, and his friend's address.

On May 6, 2019, Det. Viar went to § 87(2)(b)'s apartment pursuant to the parole warrant. Other than § 87(2)(b) parole officer informing him that § 87(2)(b) stayed at § 87(2)(b)'s apartment, Det. Viar had no indication that § 87(2)(b) was at the apartment at the time and date of his arrival. When Det. Viar knocked on the door, § 87(2)(b) opened the door. Det. Viar explained that the officers had a parole warrant for § 87(2)(b). § 87(2)(b) told Det. Viar that she no longer dated § 87(2)(b). Det. Viar explained that § 87(2)(b) provided her address to Parole and he had to make sure § 87(2)(b) was not inside. § 87(2)(b) said, in sum and substance, “No problem. Come in.” Det. Viar did not have to push the door farther open in order to enter the apartment. Det. Viar did not locate § 87(2)(b) inside the apartment, but arrested § 87(2)(b) pursuant to the I-Card.

The DD5s (BR 07) Det. Viar prepared on May 2, 2019 regarding his conversation with Parole Officer Dotts and after the incident on May 6, 2019 were consistent with his testimony. Det. Viar documented § 87(2)(b)'s consent in his DD5.

As Det. Viar was the investigating officer for § 87(2)(b) parole warrant, Allegations A and B have been pled against him.

Sgt. Samuels (BR 06) provided consistent testimony that § 87(2)(b) verbally consented to the officers' entry after Det. Viar asked to come in to ensure that § 87(2)(b) was not present. The officers searched in areas a person could hide, such as underneath beds and inside closets.

The execution of a parole warrant by a parole officer or probation officer shall be upon the same conditions and conducted in the same manner as provided for execution of a warrant by a police officer. N.Y. Crim. Proc. Law § 120.55 (BR 08).

In order to effect a warrant of arrest, the police officer may, under circumstances and in the manner prescribed in this subdivision, enter any premises in which he reasonably believes the defendant to be present; provided, however, that where the premises in which the officer reasonably believes the defendant to be present is the dwelling of a third party who is not the subject of the arrest warrant, the officer shall proceed in the manner specified in article 690 of this chapter. N.Y. Crim. Proc. Law § 120.80 (BR 09).

A search warrant is a court order and process directing a police officer to conduct a search of a designated premises for the purpose of searching for and arresting a person who is the subject of: a warrant of arrest issued pursuant to this chapter, where the designated premises is the dwelling of a third party who is not the subject of the arrest warrant. N.Y. Crim. Proc. Law § 690.05 (BR 10).

Consent to search is voluntary when it is a true act of the will, an unequivocal product of an essentially free and unconstrained choice. Voluntariness is incompatible with official coercion, actual or implicit, overt or subtle. People v. Gonzalez 39 N.Y.2d 122 (1976) (BR 11).

Prior to consent searches, officers must articulate, using plain and simple language delivered in a non-threatening manner, that the person who is the subject of the search is being asked to voluntarily, knowingly, and intelligently consent to such search and explaining that such search will not be conducted if such person refuses to provide consent to such search. New York City Administrative Code § 14-173 (BR 19).

§ 87(2)(g)

Allegation (C) Discourtesy: Detective Paul Viar spoke discourteously to § 87(2)(b)

Allegation (D) Discourtesy: Sergeant Eric Samuels acted discourteously toward § 87(2)(b)

Allegation (E) Discourtesy: Sergeant Eric Samuels spoke discourteously to § 87(2)(b)

§ 87(2)(b) testified that during the course of the search, the officers entered § 87(2)(b)'s bedroom and she followed them inside. Det. Viar told § 87(2)(b) he had an arrest warrant and had to come with the officers. The officers handcuffed § 87(2)(b) § 87(2)(b) asked Det. Viar to show her the warrant, but he did not show her one and said, "Shut the fuck up," and told her not to ask him anything. Sgt. Samuels and other officers stepped on § 87(2)(b)'s wires to her respiratory device and when she told them such, Sgt. Samuels said, "Fuck you," and, "Fuck your wires."

§ 87(2)(g)

§ 87(2)(b) did not allege that officers spoke discourteously to § 87(2)(b)

Det. Viar denied telling any occupant in the apartment, "Shut the fuck up," using the word "fuck" during the incident, or hearing any other officer do so. Det. Viar had no recollection

of § 87(2)(b) using a respiratory device and did not hear an officer tell § 87(2)(b) “Fuck you” and, “Fuck your wires.”

Sgt. Samuels testified that § 87(2)(b) was not using a respiratory device with wires at the time of the incident and denied hearing an officer say, “Shut the fuck up.” Sgt. Samuels also denied telling § 87(2)(b) “Fuck you” and, “Fuck your wires.”

§ 87(2)(g)

Allegation (F) Discourtesy: An officer spoke discourteously to § 87(2)(b)

§ 87(2)(b) testified that after the officers looked in her room, she walked back to the front door and asked the officers to leave. An officer described as a white male, standing 6’0 tall, with a heavy build, and in his 40s or 50s, told her, “Shut the fuck up.” § 87(2)(b) could not further describe the officer.

Det. Viar and Sgt. Samuels did not know which other officers entered the apartment with them or where the officers went upon their entry. Both Det. Viar and Sgt. Samuels denied hearing any officer tell § 87(2)(b) to “shut the fuck up.”

According to the Roll Call from the Warrant Section (BR 12), Det. Viar and Sgt. Samuels were working with five other officers from their command: Detective Frank Ingenito, Detective Anthony Giretti, Detective Joseph Russo, Detective Patrick Marron, and Detective Eric Ortiz. Det. Ortiz is a Hispanic male and thus does not match § 87(2)(b)’s description. Detectives Ingenito, Giretti, Russo, and Marron are all white males, aged § 87(2)(b), respectively. According to Det. Ingenito’s MOS photograph (BR 13), he is 5’6” tall § 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to two prior CCRB complaints as a reporting non-witness (BR 14):

- § 87(2)(b) [REDACTED]
- [REDACTED]
- This is the first CCRB complaint to which § 87(2)(b) [REDACTED] has been a party (BR 15).
- Det. Viar has been a member of service for 21 years and has been a subject in nine CCRB complaints and 23 allegations, none of which was substantiated. § 87(2)(g) [REDACTED]
- Sgt. Samuels has been a member of service for 21 years and has been a subject in eight CCRB complaints and 13 allegations, of which three were substantiated:
 - 201303865 involved an allegation of premises entered and/or searched. The Board recommended charges and the NYPD imposed a forfeiture of eight vacation days.
 - 201304641 involved two allegations of premises entered and/or searched, both of which were substantiated. The Board recommended charges and the NYPD imposed instructions.
 - § 87(2)(g) [REDACTED]

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of September 13, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this complaint (BR 16).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]
- [REDACTED]

Squad No.: _____

Investigator:	_____ Signature	_____ Print Title & Name	_____ Date
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Squad Leader:	_____ Signature	_____ Print Title & Name	_____ Date
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Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date
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